

105TH CONGRESS  
2D SESSION

# H. R. 3756

To restrict the disclosure of prescription information by pharmacy owners,  
pharmacists, and other pharmacy employees.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1998

Mr. NADLER (for himself, Mr. HINCHEY, Ms. WOOLSEY, Mr. STARK, Mr. KLECZKA, Mr. VENTO, Mr. SHERMAN, and Mr. GUTIERREZ) introduced the following bill; which was referred to the Committee on Commerce

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## A BILL

To restrict the disclosure of prescription information by  
pharmacy owners, pharmacists, and other pharmacy em-  
ployees.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prescription Privacy  
5 Protection Act of 1998”.

6 **SEC. 2. RESTRICTION ON DISSEMINATION OF PRESCRIP-**  
7 **TION INFORMATION.**

8 Except as provided in section 3, a pharmacy owner,  
9 pharmacist, or employee of a pharmacy may not disclose

1 prescription data to any person or governmental agency,  
2 other than the individual who is the subject of the data  
3 or another owner or employee of the pharmacy, without  
4 having obtained from such individual a written consent to  
5 the disclosure that satisfies the requirements of section 4.

6 **SEC. 3. EXCEPTIONS.**

7 A pharmacy owner, pharmacist, or employee of a  
8 pharmacy may make a disclosure of prescription data oth-  
9 erwise prohibited under section 2, if the disclosure is made  
10 under one of the following conditions:

11 (1) To the physician who wrote the prescription  
12 that is the subject of the prescription data.

13 (2) To a parent or guardian of the individual  
14 who is the subject of the prescription data, or to a  
15 court-appointed attorney representing the individual,  
16 but only where the individual is a minor.

17 (3) To a guardian of the individual who is the  
18 subject of the prescription data, or to a court-ap-  
19 pointed attorney representing the individual, but  
20 only where the individual is not capable, because of  
21 a physical or mental condition, to effect a written  
22 consent that satisfies the requirements of section 4.

23 (4) To an agent of the individual who is the  
24 subject of the prescription data, where the agent is

1 acting under authority granted in a power of attor-  
2 ney.

3 (5) In the case of a pharmacy owner, to an  
4 agent of the owner, where the disclosure is necessary  
5 for the purpose of a carrying out a written contract  
6 between the agent and the owner under which the  
7 agent—

8 (A) is required to perform administrative  
9 services for the owner; and

10 (B) is prohibited from disclosing the pre-  
11 scription data to any person other than the  
12 owner.

13 (6) For purposes of complying with a judicial or  
14 administrative subpoena or a court order.

15 (7) For purposes of providing information re-  
16 quested in a law enforcement investigation, an audit,  
17 a pharmacist licensure procedure, or a professional  
18 review.

19 (8) In the course of oral testimony in a deposi-  
20 tion or court proceeding.

21 (9) Where the disclosure is necessary to support  
22 an application for receipt of health care benefits  
23 from a health insurance provider or a governmental  
24 agency.

1           (10) Where the disclosure is made for the pur-  
2       pose of permitting any person to carry out a duty  
3       or authority under title XVIII or XIX of the Social  
4       Security Act.

5 **SEC. 4. CONSENT.**

6       A pharmacy owner, pharmacist, or employee of a  
7       pharmacy may make a disclosure of prescription data to  
8       any person or governmental agency other than the individ-  
9       ual who is the subject of the data, if the owner, phar-  
10      macist, or employee has obtained from such individual a  
11      written consent to the disclosure that includes the follow-  
12      ing information:

13           (1) The name of the individual who is the sub-  
14      ject of the data.

15           (2) The name of the physician who wrote the  
16      prescription that is the subject of the data.

17           (3) The nature of the data authorized to be dis-  
18      closed.

19           (4) The date on which the consent expires.

20           (5) The date on which the consent is executed.

21           (6) The signature of the individual who is the  
22      subject of the data.

1 **SEC. 5. REGULATIONS AND ENFORCEMENT.**

2 (a) REGULATIONS.—The Secretary of Health and  
3 Human Services and the Secretary of Labor shall jointly  
4 promulgate regulations to enforce this Act.

5 (b) VIOLATION.—

6 (1) IN GENERAL.—Any person who the Sec-  
7 retary of Health and Human Services or the Sec-  
8 retary of Labor determines has substantially and  
9 materially failed to comply with this Act, or a regu-  
10 lation promulgated by such Secretary under this  
11 Act, shall be subject, in addition to any other pen-  
12 alties that may be prescribed by law, to a civil pen-  
13 alty of not more than \$10,000 for each such viola-  
14 tion.

15 (2) PROCEDURES FOR IMPOSITION OF PEN-  
16 ALTIES.—Section 1128A of the Social Security Act,  
17 other than subsections (a) and (b) and the second  
18 sentence of subsection (f) of that section, shall apply  
19 to the imposition of a civil monetary penalty under  
20 paragraph (1) in the same manner as such provi-  
21 sions apply with respect to the imposition of a pen-  
22 alty under section 1128A of such Act.

23 **SEC. 6. PREEMPTION.**

24 This Act shall not preempt any State law that is not  
25 inconsistent with this Act, but that imposes additional re-  
26 quirements with respect to a prohibition under this Act.

1 **SEC. 7. DEFINITIONS.**

2 For purposes of this Act:

3 (1) GUARDIAN.—The term “guardian” means a  
4 court-approved or court-appointed guardian of an in-  
5 dividual.

6 (2) PARENT.—The term “parent” means a bio-  
7 logical, adoptive, or foster parent.

8 (3) PHARMACIST.—The term “pharmacist”  
9 means a person who is licensed to engage in the  
10 practice of pharmacology.

11 (4) PHARMACY OWNER.—The term “pharmacy  
12 owner” means any person that operates a licensed  
13 pharmacy.

14 (5) PHYSICIAN.—The term “physician” means  
15 a health care professional who is legally authorized  
16 to write prescriptions for pharmaceutical products.

17 (6) PRESCRIPTION DATA.—The term “prescrip-  
18 tion data” means any written, printed, or electroni-  
19 cally recorded information maintained by a phar-  
20 macist or pharmacy owner that indicates the phar-  
21 maceutical product or drug therapy prescribed by a  
22 physician. Such term includes information such as  
23 brand name, scientific name, manufacturer, and  
24 medical use of the pharmaceutical product or drug  
25 therapy.

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